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LEO FRANK LOSES HIS

FIGHT FOR NEW TRIAL

Judge Hill's Denial of
Extra-

Ordinary Motion
Upheld

By Supreme Court

In a decision handed down Wednesday afternoon, the Supreme Court of Georgia affirmed the decision of Judge Benjamin H. Hill in denying the extraordinary motion of Leo M. Frank for a new trial on the grounds of newly discovered evidence.

The decision of the State's highest tribunal, denying Frank a new trial, leaves the man convicted of the murder of Mary Phagan in the basement of the National Pencil factory on April 26, 1913, with only one more chance in the Courts.

The motion to set aside the verdict on the grounds that Frank was not in the Court Room when the verdict was rendered, which was denied by Judge Hill, has been appealed to the Supreme Court, and will be argued on the 26th of this month. A decision will follow some weeks later. Should the State Supreme Court refuse the motion to set aside the verdict, Frank's lawyers can appeal to the United States Supreme Court, it is said, as a constitutional point is involved.

COURT'S DECISION.

In affirming the lower Court's decision, the Supreme Court held as follows:

"1. After a person accused of crime has been convicted and a new trial has been denied and the judgment has been affirmed by this Court, an extraordinary motion for a new trial, on the grounds of newly discovered evidence is addressed to the sound discretion of the trial judge (there being such general rules, as to evidence of particular crime and as to diligence, etc.) and the refusal to grant a new trial, on such a motion, will not be reversed, unless such discretion is abused."

"2. In view of the nature of the alleged newly discovered evidence, on the basis of which an extraordinary motion for a new trial was made in the present case, and of the strong counter showing made by the State in regard to it, there was no abuse of discretion on the part of the trial judge in refusing to grant a new trial, or was there error in overruling the motion on any of the grounds set out therein."

After the foregoing Headnotes, the Supreme Court briefly recites the history of the case up to and including the filing of the extraordinary motion for a new trial. It mentions the fact that in the first trial Frank was convicted; that appeal was taken to the

Supreme Court; that the Supreme Court affirmed the judgment of the lower Court; that an Application was then made by the defense for a re-hearing before the Supreme Court, which was denied, and that then the extraordinary motion for a new trial was made.

DISCRETION NOT ABUSED.

The Supreme Court hold that “when an extraordinary motion for a new trial is made, based on the ground of newly discovered evidence, it should be made to appear that such evidence is so material that it would probably produce a different verdict.” Continuing, the decision says: “On the hearing of such a motion, the Court may hear affidavits, making a counter-showing on behalf of the State, so as to go to the bottom of the showing, to discover, if possible, how much of real merit there is in the alleged new evidence.”

Finally, the Court holds as follows: “We deem it unnecessary to take up each of the grounds of the motion and discuss them separately in the light of the evidence offered in support of them, and of the counter showing made by the State. It is enough to say that, after a consideration of them, it cannot be held that the discretion of the presiding judge in refusing to grant the extraordinary motion was abused, or that a case is made requiring a reversal.”

ALL JUDGES CONCUR.

The decision then affirms the judgment of Judge Hill in overruling the extraordinary motion. All six of the judges concur in this decision.

The extraordinary motion for a new trial, filed by Frank’s Attorneys, alleged numerous grounds, principal of which was the contention that Dr. H. F. Harris, State medical expert, had declared that hair found on the turning lathe in the pencil factory differed from the hair taken from Mary Phagan after her death; an Affidavit by Rev. J. B. Ragsdale, who alleged that he overheard a Negro confess to the murder of Mary Phagan which was later

repudiated by Mr. Ragsdale; the alleged confession obtained from James Conley in the Fulton County jail by a Negress named Annie Maud Carter, and numerous Affidavits, in which State's witnesses were purported to repudiate evidence given by them at Frank's original trial, most of which Affidavits were later recanted by their makers.
